THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.24802 of 1995

DATED: -01-2007

Between:

I.Chinna Rao
And another

… Petitioners.

And

Government of A.P., rep by
Secretary, General Administration Department,
Hyderabad.
and two others.

… Respondents.

ORDER:

In this writ petition the petitioners sought for a writ of mandamus to declare the action of respondents in not regularizing their services (in the Andhra Pradesh Industrial Infrastructure Corporation Limited (for short 'the Corporation') as arbitrary, illegal and violative of Articles 14, 16, 21 and 39-(1)(D) of the Constitution of India and for a consequential direction to the respondents to regularize their services with all consequential benefits in terms of G.O.Ms.No.212 Finance and Planning (FW.PC.III) Department, dated 22.4.1994 or in terms of circular No.288/PW/APIIC/E2/NMR/89, dated 22.7.1993, issued by the Corporation.

The averments contained in the affidavit filed in support of the writ petition to the extent they are relevant for the purpose of this writ petition are that the petitioners belong to B.C.-B group and have passed Vth Class; the first petitioner was engaged as N.M.R., on 1.6.1980 and the second petitioner was engaged as N.M.R., on 28.10.1980; since the date of their engagements they were assigned several duties, however the main duties assigned to them being that of watchman duty; the management agreed before the Assistant Commissioner of Labour, Vishakapatnam for regularization of the petitioners' services as per G.O.Ms.No.143 dated 16.3.1994 and that the proposals having already been referred to the Head Office in this regard, orders from the Head Office were awaited; the petitioners made

representation to the respondents to regularize their services and the Zonal Manager (E), Vizianagaram recommended for regularization of the petitioners' services to respondents 1 and 2, in terms of the policy decision taken by the Corporation in Circular No.288/PW/APIIC/E2/NMR/89, dated 22.7.1993.

The petitioners further averred that while the details of the persons working were called for by the head office and sent by the field offices in the year 1991-92, the Government of Andhra Pradesh, the first respondent issued G.O.Ms.No.212 dated 22.4.1994 providing for regularization of daily wage/N.M.Rs., subject to the conditions stipulated therein. The further grievance of the petitioners expressed in the affidavit is that not only that their services were not regularized but they are not being paid regular scales of pay which is arbitrary and unconstitutional.

The Manager (Law) of the Corporation filed a counter affidavit in which the petitioners' claim that they were first engaged as N.M.Rs., in June 1980 and October 1980 respectively and that they belong to Backward Class is not denied. It is however mentioned that the services of the petitioners were utilized at the work spots and they were paid periodically for rendering services on daily wage basis as per S.S.R., rates prevailing at that time. The petitioners are continued as N.M.Rs., as per the instructions given by the Assistant Commissioner of Labour at a joint meeting held on 9.2.1987. It is further mentioned in the counter affidavit that the issue relating to the regularization of N.M.Rs., was examined by the Corporation in detail and it was decided to regularize the services of N.M.Rs., who have completed 8 years service by issuing circular No.288/PW/APIIC/E2/NMR/89, dated 22.7.1993; while this issue was under process, Government promulgated an ordinance in November

1993 banning all types of appointments in Government as well as Public Sector Undertakings including N.M.Rs. The ordinance was replaced by Act 2 of 1994 in February 1994 giving retrospective effect to it from 25.11.1993; later government called for information relating to N.M.Rs., daily wage and other temporary appointments. It is further averred that in April 1994 Government of Andhra Pradesh issued G.O.Ms.No.212 Finance and Planning dated 22.4.1994 providing for regularization of service of daily wage/N.M.Rs., who have put in minimum period of five years service and were continued in service as on 25.11.1993; other conditions stipulated in the G.O., include qualifications as per Rules, age limit, rule of reservation, clear vacancies of posts etc., ; while the matter was under examination, government by its D.O., letter dated 15.6.1994 informed (the Corporation) that certain employees filed writ petition in the Supreme Court challenging the Act 2 of 1994 and that the Hon'ble Supreme Court while disposing of the writ petitions in the light of the government scheme enumerated in G.O.Ms.No.212 (F&P) dated 22.4.1994 granted six months time for completion of entire process of regularization; accordingly after obtaining the information about the N.M.Rs., from the concerned offices the services of certain N.M.Rs., were regularized according to the direction of the High Court. It is further stated in the counter affidavit that the petitioners are being continued in service as per the orders dated 3.11.1995 made in W.P.M.P.No.30548 of 1995 in W.P.No.No.24802 of 1995.

The learned counsel for the petitioners vehemently submitted that the action of the respondents in not regularizing the services of the petitioners in terms of circular No.288/PW/APIIC/E2/NMR/89, dated 22.7.1993 and also in terms of G.O.Ms.No.212 dated 22.4.1994 is highly arbitrary and illegal. The learned counsel referred to the

averments contained in the counter affidavit filed on behalf of the Corporation and submitted that the Corporation failed to give any reason why the petitioners' services were not regularized at least after the disposal of the batch of cases filed questioning the validity of Act 2 of 1994, by the Supreme Court.

Sri R.Subba Rao, learned Standing Counsel for the Corporation submitted that the petitioners are continuously working from 1.6.1980 and 28.10.1980 respectively as N.M.Rs., and that they are entitled to be considered for regularization of their services in terms of both the Corporation's circular No.288/PW/APIIC/E2/NMR/89, dated 22.7.1993 and also in terms of G.O.Ms.No.212 dated 22.4.1994.

Having regard to the fair admission made by the learned Standing Counsel on behalf of the Corporation it is not necessary to discuss in detail the scope and ambit of the circular dated 22.7.1993 and the G.O.Ms.No.212 dated 22.4.1994. Suffice it to notice that while the circular No.288/PW/APIIC/E2/NMR/89, dated 22.7.1993 envisages regularization of N.M.R., employees who have completed 8 years of service from their original engagements in the Corporation in the regular pay scale of Rs.740-15-950-20-1150, G.O.Ms.No.212 dated 22.4.1994 issued by the first respondent, the application of which to the Corporation was admitted, mainly stipulated that the services of N.M.Rs., "who worked continuously for a minimum period of five years and are continuing on 25.11.1993" are entitled to be regularized subject to the conditions mentioned therein. It is not the case of the Corporation that the petitioners do not satisfy the requirements of either the circular or the G.O. As pointed by the learned counsel for the petitioners, the Corporation failed to give one good reason for its failure to regularize the services of the petitioners who on their own showing are eligible for being considered for regularization. The

Corporation also failed to explain why it has not regularized the services of the petitioners while it has regularized the services of "certain N.M.Rs.," as mentioned in their counter affidavit. It is rather unfortunate that the Corporation which is an instrument of the State exercising sovereign functions is apathetic to the just needs of its own workmen, driving them to litigate in courts for decades eventually making them to pass off their prime age in the needless litigation. In the absence of any mala fides attributed by the petitioners against any particular officer, while no finding can be recorded on this aspect, it is legitimate to presume from the admitted facts of this case that those at the helm of affairs are either too indifferent towards the work force of their organization or would have acted according to their subjective considerations to flout the Corporation's own directive and the executive order issued by the Government of Andhra Pradesh. To say the least, this attitude on the part of the executive apparatus of an instrumentality of the State does not augur well for a State which is governed by Rule of Law. For no fault on the part of the petitioners they are denied their just claim for regularization in terms of the Corporation's own circular and the Government Order for the last 11 years.

Under these circumstances I deem it expedient to direct the Corporation to consider the cases of the petitioners for regularization and payment of regular scale from 2.11.1995, the date on which the writ petition was filed, in terms of circular No.288/PW/APIIC/E2/NMR/89, dated 22.7.1993 issued by the Corporation and the G.O.Ms.No.212 dated 22.4.1994 issued by the Government of Andhra Pradesh within a period of four weeks from the date of receipt of a copy of this order. Needless to say that the petitioners are entitled to all the service benefits including seniority

from the dates of their regularization.

Subject to above, the writ petition is allowed.

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C.V.NAGARJUNA REDDY,J

Dt: -01-2007.
Mdaa.